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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,841	11/30/2000	Brian J. Fleeman	30697	1529

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HOVEY WILLIAMS TIMMONS & COLLINS
2405 GRAND BLVD., SUITE 400
KANSAS CITY, MO 64108

EXAMINER
THANH, LOAN H

ART UNIT	PAPER NUMBER
3763	

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/726,841	Applicant(s) FLEEMAN, BRIAN J.	
	Examiner LoAn H. Thanh	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 September 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *4-14* is/are pending in the application.

4a) Of the above claim(s) *13 and 14* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *4-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Election/Restrictions

Applicant's election of Group II, claims 4-12 in Paper No. 4 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

An action on the merits now follows.

Specification

The disclosure is objected to because of the following informalities:

Reference character "14" has been used to designate both proximal and distal end. See page 3, lines 34-35.

Appropriate correction is required.

Claim Objections

Claim 7 is objected to because of the following informalities: The preamble is improperly recited. Applicant is suggested to refer to the initial recitation of "The combination" to "A combination". Further, applicant is suggested to better recite the preamble, such as "A feeding tube and fixture combination..." . Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 is vague and indefinite because it is unclear what structure the guidewire mount encompasses. "the end of said first leg " lacks proper antecedent basis. It is unclear whether Applicant is referencing another end or the same end of the connection end. It is suggested to change "the end" to "an end".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4-6,11 are rejected under 35 U.S.C. 102(b) as being anticipated by Piontek et al. (U.S. Patent No. 5,071,405).

Piontek et al. disclose a patient feeding tube (10) comprising an elongated tube (12) having a distal end and a proximal portion and a fixture operably coupled to the proximal portion. Piontek et al. teach an intermediate coupling member considered to be

the y-port (22). See figure 1. With respect to the claimed functional limitations, Piontek et al. is capable of being attached to a CO_2detecting machine.

Claims 4-5,11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Frederick et al. (U.S. Patent No. 4,874,365).

Frederick et al. disclose a fixture (16) for connection to the proximal end of a feeding tube (12) comprising bifurcated body having a first and second (44) leg wherein the guidewire (62) extends through the first leg and the feeding tube(12). The first leg having a connection end with the proximal end (14) of the tube (12). The guidewire mount is considered to be secured to an end of the first leg via the plug (56) that is remote from the connection end of the first leg. With respect to the functional limitations of the claims, the device of Frederick et al. meets the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piontek et al. (U.S. Patent No. 5,071,405) in view of Kimball et al. (U.S. Patent No. 6,258,046).

Piontek et al. teach all the limitations of the claims except for a CO_2 detecting machine. Kimball et al. teach a CO_2 machine (30) for detecting the CO_2 (via the

sensor) in the analogous art of tubes placed in the digestive systems. Kimball et al. teach CO_2 (PCO_2) to be detected, monitored and measured for assessing perfusion failure in the stomach and intestines. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the feeding device of Piontek et al. with a CO_2 machine as taught by Kimball et al. in order to assess the perfusion failure in the tissues of the digestive tract of the patient.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (703) 305-0038. The examiner can normally be reached on Monday to alternating Fridays (7:00 am-4:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

LoAn H. Thanh
Examiner
Art Unit 3763

LT
September 20, 2002